

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2003-0014

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SONOMA COUNTY WATER AGENCY AND PENNGROVE SANITATION DISTRICT
SONOMA COUNTY**

Pursuant to California Water Code (CWC) Sections 13323 and 13385, this Complaint to assess administrative civil liability (ACL) is issued to Sonoma County Water Agency and Penngrove Sanitation District (hereinafter the Dischargers). The Complaint addresses the Dischargers' violation of Discharge Prohibition 15 contained in Table 4-1 of the 1995 Water Quality Control Plan (hereinafter the Basin Plan).

The Executive Officer finds that:

1. Penngrove Sanitation District (PSD) owns a sewage collection system that serves the Town of Penngrove in Sonoma County. Sonoma County Water Agency (SCWA) operates and maintains the sewer collection system for PSD. The collected sewage is conveyed to the City of Petaluma wastewater treatment plant for treatment and disposal.
2. On April 15, 2002, SCWA received a report of sewage overflow from manhole MH15-9, which is located in the property at 411 Bannon Road, Penngrove. The overflow resulted in an unauthorized discharge of untreated sewage to Lichau Creek via an un-named ditch. Lichau Creek is a tributary of the Petaluma River and San Pablo Bay. SCWA attributed the overflow to a large cotton absorbent towel that plugged the 8-inch collection system. Based on site interviews with two property owners, SCWA reported that the overflow could have been active for up to two weeks prior to April 15, 2002. The estimated volume of un-recovered sewage overflow was 400,000 gallons.
3. The Basin Plan establishes water quality objectives and discharge prohibitions for the protection of beneficial uses of San Pablo Bay and its tributaries. Specifically, Discharge Prohibition 15 in Table 4-1 of the Basin Plan states that it shall be prohibited to discharge raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin.
4. Pursuant to CWC Section 13323, the Executive Officer may issue a complaint to any person on whom administrative civil liability may be imposed. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.
5. Pursuant to CWC Section 13385(a)(4), a discharger is civilly liable for violations of waste discharge prohibitions specified in a water quality control plan.

ALLEGATION

6. The Dischargers are alleged to have violated Discharge Prohibition 15 contained in Table 4-1 of the Basin Plan for discharging up to 400,000 gallons of un-recovered raw sewage to the tributary of the

Petaluma River and San Pablo Bay for a duration up to fourteen days during the period between April 1, 2002 and April 15, 2002.

PROPOSED CIVIL LIABILITY

1. The Regional Board could impose the maximum civil liability in this matter as follows:
 - a. \$10,000 for each day in which a violation occurred; and
 - b. \$10 per gallon for the discharge volume that is not susceptible to cleanup and exceeds 1,000 gallons.

If the matter is referred to the Attorney General for judicial enforcement, a higher liability of \$25,000 per day of violation and \$25 per gallon may be imposed.

2. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.
3. In determining the amount of ACL, the following factors, which are defined in Section 13385(e) of the CWC, have been taken into consideration and are discussed in the attached Staff Analysis and Recommendations, which is incorporated herein by this reference:

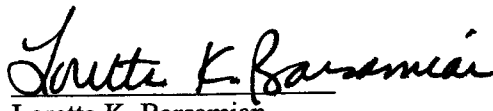
"The nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters that justice may require."

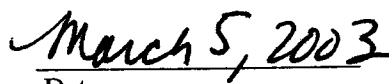
SONOMA COUNTY WATER AGENCY AND PENNGROVE SANITATION DISTRICT ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Dischargers be assessed ACL in the amount of \$38,000, which includes \$4,000 in staff cost.
2. The Regional Board will hold a hearing on this Complaint on May 21, 2003, unless the Dischargers waive the right to a hearing by signing the last page of this Complaint and check the appropriate box. By doing so, the Dischargers agree to:
 - a) Pay the full penalty of \$38,000 within 30 days after the signed waiver becomes effective, or
 - b) Pay a penalty in an amount of \$4,000 within 30 days after the signed waiver becomes effective, and satisfactorily complete a supplemental environmental project (SEP) in an amount equivalent to \$34,000.
3. If the Dischargers choose to propose a SEP, they must submit a proposal by April 11, 2003 for the Executive Officer's approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002. If the proposed SEP is not acceptable to the

Executive Officer, the Dischargers have 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended amount of \$34,000. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.

4. The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and re-issue it as appropriate.
5. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed ACL, or whether to refer the matter to the Attorney General for recovery of the civil liability.


Loretta K. Barsamian
Executive Officer


Date

WAIVER

(The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and re-issue it as appropriate.)

- ☐ Waiver of the right to a hearing and agree to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0014 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.
- ☐ Waiver of the right to a hearing and agree to make payment and undertake a SEP.
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0014, and to satisfactorily complete a supplemental environmental project (SEP) in lieu of the suspended liability of \$34,000. I also agree to remit payment of \$4,000 to the State Water Pollution Cleanup and Abatement Account within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount of \$34,000 within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to complete the approved SEP within a time schedule set by the Executive Officer.

Name (print)

Signature

Date

Title/Organization

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF ANALYSIS AND RECOMMENDATIONS

TO: Loretta K. Barsamian
Executive Officer

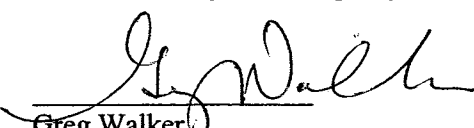
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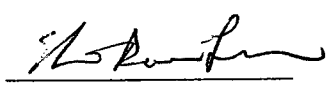
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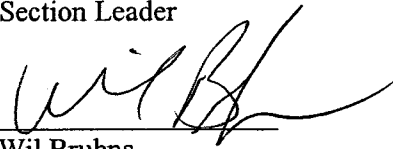
SIGNATURE: 

SUBJECT: Consideration of Administrative Civil Liability for Violation of Sewage Discharge
Prohibition in 1995 Water Quality Control Plan - **Complaint No. R2-2003-0014**
Sonoma County Water Agency and Penngrove Sanitation District, Sonoma County

CONCUR:


Greg Walker
Section Leader


Shin-Roei Lee
Division Chief


Wil Bruhns
Enforcement Coordinator

Reviewed for Legal
Form and Sufficiency:


Yuri Won
Attorney

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I. SUMMARY

The administrative civil liability (ACL) Complaint No. R2-2003-0014 imposes a total fine of \$38,000 on Sonoma County Water Agency (SCWA) and Penngrove Sanitation District (PSD) (hereinafter the Dischargers) for the violation of Discharge Prohibition 15 contained in Table 4-1 of the 1995 Water Quality Control Plan (hereinafter the Basin Plan). During the period between April 1, 2002 and April 15, 2002, the Dischargers had an unauthorized discharge up to 400,000 gallons of un-recovered raw sewage to Lichau Creek, a tributary of the Petaluma River and San Pablo Bay.

The penalty assessment in the Complaint follows the procedures and requirements in the Water Quality Enforcement Policy (hereinafter the Enforcement Policy), which was adopted by the State Water Resources Control Board on February 19, 2002 and approved by the Office of Administrative Law on July 30, 2002.

II. BACKGROUND

PSD owns a sewage collection system that serves the Town of Penngrove in Sonoma County. SCWA operates and maintains the sewer collection system for PSD. The collected sewage is conveyed to the City of Petaluma wastewater treatment plant for treatment and disposal.

On June 21, 1995, the San Francisco Bay Regional Water Quality Control Board (hereinafter the Regional Board) adopted the Basin Plan, which was subsequently approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, and November 13, respectively, of 1995. Under the California Water Code (CWC), the Regional Board is charged with authority to adopt and implement the Basin Plan in protecting the water quality of the San Francisco Bay and its tributaries.

III. DISCHARGE PROHIBITION OF BASIN PLAN VIOLATED

The Basin Plan identifies beneficial uses and water quality objectives for surface waters in the region. It also establishes effluent limitations and discharge prohibitions intended to protect those beneficial uses. Specifically, Discharge Prohibition 15 in Table 4-1 of the Basin Plan states that it shall be prohibited to discharge raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin.

IV. ENFORCEMENT CONSIDERATIONS

Section 13385(e) of the CWC requires the Regional Board to consider various factors when issuing an ACL. These include the nature, circumstances, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup effort undertaken, degree of culpability, prior history of violations, economic benefit or savings, and other factors justice may require. These factors, which are also described in the Enforcement Policy, are further discussed in following sections.

A. Nature of Violation

On April 15, 2001, SCWA received a report of sewage overflow from manhole MH15-9, which is located in the property at 411 Bannon Road, Penngrove. The overflow resulted in an unauthorized

discharge of untreated sewage to Lichau Creek via an un-named ditch. Lichau Creek is a tributary of the Petaluma River and San Pablo Bay; both are waters of the State. The estimated volume of un-recovered sewage overflow was 400,000 gallons.

B. Circumstances, Extent, and Gravity of Violation

SCWA believes a large absorbent towel that was found in the sewer section between MH15-9 and a downstream manhole MH15-8 has caused the overflow from MH15-9. Based on site interviews with two property owners, SCWA indicated that the overflow could have been active for up to two weeks prior to April 15, 2002. The un-recovered overflow volume of 400,000 gallons was based on SCWA's 4/19/2002 spill report in which its maintenance crew estimated an overflow rate of 20 gpm for a total of 14 days. It is likely that any environmental impacts caused by the sewage overflow may have lingered for a certain period of time due to the 14 days of un-noticed overflow.

According to SCWA, MH15-9 is located in a fenced private property. The identified towel could have entered into the 8-inch sewer pipe as a result of illegal dumping at an upstream manhole. During a joint site inspection with Board staff on February 5, 2003, SCWA's representatives confirmed that manhole lids of the sewer collection system in the remote areas of the Town of Penngrove were not securely locked prior to the April 15, 2002 spill. After the spill, SCWA installed two bolt-down lids and frames to secure the access to MH15-9 and MH15-8. SCWA further explained that the manholes were not provided with security locks due to the agency's limited resources, and the consideration that accesses to these manholes are restricted and these manholes have no overflow history.

Table 1 below summarizes the sampling results conducted by SCWA during and after the sewage overflow. Although there were no sampling results regarding the biochemical oxygen demand (BOD) and total suspended solids (TSS) available, the low dissolved oxygen levels in the downstream location and elevated ammonia levels measured at the spill and downstream locations indicated that the overflow was typical of raw sewage.

Table 1. Sampling Results for Penngrove Sewage Overflow

Date	Pollutant	Upstream	Spill	Downstream
4/15/02	Coliform (MPN/100 mL)	> 1,600	> 1,600	> 1,600
	Fecal Coliform (MPN/100 mL)	500	> 1,600	> 1,600
	Ammonia (mg/L)	ND	41	2.0
	Dissolved Oxygen (mg/L)	--	--	--
4/23/02	Ammonia (mg/L)	--	--	--
	Dissolved Oxygen (mg/L)	3.7	--	< 1.0
4/30/02	Ammonia (mg/L)	0.1	--	1.4
	Dissolved Oxygen (mg/L)	4.05	--	1.33
5/21/02	Ammonia (mg/L)	0.2	--	1.8
	Dissolved Oxygen (mg/L)	2.85	--	0.08
5/29/02	Ammonia (mg/L)	0.6	--	> 3
	Dissolved Oxygen (mg/L)	3.86	--	2.62
6/4/02	Ammonia (mg/L)	1	--	3.2
	Dissolved Oxygen (mg/L)	2.1	--	0.28

C. Degree of Toxicity of the Discharge

The Basin Plan designates following beneficial uses of the Petaluma River and San Pablo Bay and their tributaries:

- Water contact and non-contact recreation
- Navigation
- Wildlife habitat
- Preservation of rare and endangered species
- Fish spawning
- Cold freshwater habitat
- Warm freshwater habitat
- Marine habitat
- Fish migration

Because SCWA did not sample the receiving waters for other pollutant data, such as BOD and TSS, it is difficult for Board staff to accurately assess the impacts of the discharge. However, raw sewage typically has elevated concentrations of BOD, TSS, oil and grease, ammonia, and bacteria (which are measured in terms of total coliform). These pollutants exert varying levels of adverse impacts on the water quality, and hence may have adversely affected the beneficial uses of the receiving waters to different extent. Some possible adverse effects on the water quality and beneficial uses as a result of the sewage overflow include:

- Adverse impacts on the benthic community, fish, and other aquatic biota caused by the deposition of TSS and oil and grease;
- Creation of local toxic environment in the water bodies as a result of the discharge of elevated oxygen demanding pollutants, which would lower the dissolved oxygen, and ammonia, which is a demonstrated toxicant to fish even at low concentrations; and,
- Impairment to water recreation and harm to fish and wildlife as a result of the presence of elevated coliform bacteria including pathogens.

D. Discharge Susceptible to Cleanup and Abatement

Had the Dischargers noticed the occurrence of the overflow, the discharge might have been susceptible to cleanup instead of eventually emptying into the Petaluma River. Since the overflow occurred for an extended period of time, most of the unauthorized discharge was not subject to cleanup and abatement.

E. Voluntary Cleanup Efforts Undertaken

After receipt of the overflow report on April 15, 2002, SCWA's response crew arrived at the site within 15 minutes. Upon notifying all necessary agencies of the overflow, SCWA hired a contractor to remove the sewage accumulated on the grassy field surrounding MH15-9. Additionally, contaminated soil and debris were removed as part of SCWA's cleanup efforts, which also included the placement of a cofferdam to prevent the overflow from continuously flowing into Lichau Creek. According to SCWA, an unknown amount of pooled sewage behind the cofferdam was pumped back to the collection system after the spill.

F. Degree of Culpability

Although PSD owns the sewage collection system, SCWA is responsible for the proper operation and maintenance to prevent sewage overflow. Proper maintenance includes, but is not limited to, the inspection, flushing and cleaning of the conveyance system to keep it free from blockage. The concerned

manholes and pipeline section were cleaned on November 13, 2000 in accordance with its 2-year maintenance schedule. However, secured manhole lids could have prevented any unauthorized access and illegal dumping. Thus, the Dischargers are culpable for the sewage overflow.

G. History of Violations and Enforcement

SCWA confirmed that there was no historical sewage overflow from the concerned manholes and associated pipeline section. The Regional Board has not had any previous enforcement action against the Town of Penngrove.

H. Other Factors Justice May Require

Although SCWA has been responsive to Board staff's request for information in the preparation of this Complaint and properly notified all necessary agencies of the sewage spill, it did not analyze the collected samples for BOD, TSS, and other pollutant parameters that would otherwise facilitate Board staff to adequately assess the extent, gravity and impacts of the violation. Additionally, the sewage overflow was not caused by any storm-related events or excessive inflow/infiltration problem. As such these factors have no net effect on Board staff's consideration for penalty adjustment.

V. DETERMINATION OF ACL AMOUNT

The Enforcement Policy establishes the procedure to set ACL amounts. The procedure consisted of nine steps, namely, initial liability, beneficial use liability, base amount, adjustment for discharger's conduct, adjustment for other factors, economic benefit, staff costs, adjustment for ability to pay, and check against statutory limits. The determination of the proposed ACL amount for the above-cited violation of the discharge prohibition of the Basin Plan followed the Enforcement Policy, and is summarized as follows:

A. Initial Liability

The Enforcement Policy directs that the initial liability be set based on factors related to the discharge – the nature, circumstances, extent, and gravity of the violations, the degree of toxicity of the discharge, and the susceptibility of the discharge to cleanup or abatement. It further states that “[F]or spills, effluent limitation violations, and similar violations, the initial water quality liability can be based on a per-gallon and/or per day charge..”. In consideration of the aforesaid factors related to the sewage overflow, the initial water quality liability is determined to be \$49,000.

B. Beneficial Use Liability

No information related to any quantifiable impacts to beneficial uses of the receiving water was available. Therefore, the beneficial use liability is indeterminate.

C. Base Amount

The Enforcement Policy describes that the base amount can be a combination of the initial liability and the beneficial use liability. Board staff believes the above combined initial and beneficial use liabilities of \$49,000 is appropriate to reflect the significance of the violation.

D. Conduct of the Dischargers

SCWA has a commendable cleaning schedule and voluntarily removed sewage collected behind the cofferdam and contaminated soil from the vicinity of MH15-9. Considering the Dischargers' responsiveness and cooperation in this matter and voluntary securing of the manhole lids, the initial liability is reduced to \$34,000.

E. Adjustment for Other Factors

As discussed in section IV.H above, Board staff believes the above ACL amount is appropriate and no adjustment is needed based on other factors.

F. Economic Benefits

The economic benefit amounted to the interest and/or income earned from capital investments that would have otherwise been spent on the proper management of the collection system to comply with the Basin Plan requirements. The sewage overflow was attributed to the Dischargers not securing manhole lids to prevent illegal dumping. SCWA's cost data indicate that it has taken 30 man-hours to complete the installation of two bolt-down manhole lids. The total cost of providing a properly secured manhole lid, based on the May 2002 price, was \$1,950. As such, the estimated economic benefit was considered insignificant.

G. Staff Costs

Board staff spent a total of 40 hours staff time to prepare the Complaint and the supporting evidence. At an average cost to the State of \$100 per hour, the total staff cost for this enforcement action was \$4,000, and added to the ACL amount. The adjusted ACL amount becomes \$38,000.

H. Ability to Pay and Ability to Continue in Business

Board staff has compared the above-adjusted ACL amount with the available budget information for the fiscal year 2001-2002, and determines that it is only a small percentage of the Dischargers' overall budgets. Thus the recommended ACL amount will not seriously jeopardize the Dischargers' abilities to continue in business.

I. Statutory Maximum Penalty

The statutory maximum amount of ACL for each day of violation is ten thousand dollars (\$10,000) plus ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. The proposed ACL amount does not exceed the statutory maximum penalty.

VI. RECOMMENDATION

In consideration of the facts in this case, Board staff recommends a civil liability of \$38,000 be imposed against Sonoma County Water Agency and Penngrove Sanitation District for their 14-day violation of Discharge Prohibition 15 contained in Table 4-1 of the Basin Plan and the unauthorized discharge of up to 400,000 gallons of sewage into a tributary of the Petaluma River and San Pablo Bay. The proposed civil liability amount includes the recovery of staff cost in preparation of the Complaint.